

Senate Study Bill 1130

SENATE/HOUSE FILE _____
BY (PROPOSED ETHICS AND
CAMPAIGN DISCLOSURE BOARD
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the ethics and campaign disclosure board,
2 including reports of official misconduct, lobbyist and client
3 reports, advisory opinions, campaign finance reporting, and
4 making penalties applicable.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 1157DP 80
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1 1 Section 1. Section 68B.32, subsection 1, Code 2003, is
1 2 amended to read as follows:
1 3 1. An Iowa ethics and campaign disclosure board is
1 4 established as an independent agency. ~~Effective January 1,~~
~~1 5 1994, the~~ The board shall administer this chapter and set
1 6 standards for, investigate complaints relating to, and monitor
1 7 the ethics of officials, employees, lobbyists, and candidates
1 8 for office in the executive branch of state government. The
~~1 9 board shall administer chapter 721 and set standards for,~~
~~1 10 investigate complaints relating to, and monitor the conduct of~~
~~1 11 officials, employees, and candidates for office in the~~
~~1 12 executive branch of state government under chapter 721.~~ The
1 13 board shall also administer and set standards for, investigate
1 14 complaints relating to, and monitor the campaign finance
1 15 practices of candidates for public office. The board shall
1 16 consist of six members and shall be balanced as to political
1 17 affiliation as provided in section 69.16. The members shall
1 18 be appointed by the governor, subject to confirmation by the
1 19 senate.
1 20 Sec. 2. Section 68B.32, subsection 5, Code 2003, is
1 21 amended to read as follows:
1 22 5. The board shall employ a full-time executive director
1 23 who shall be the board's chief administrative officer. The
1 24 board shall employ or contract for the employment of legal
1 25 counsel notwithstanding section 13.7, and any other personnel
1 26 as may be necessary to carry out the duties of the board. The
1 27 board's legal counsel shall be the chief legal officer of the
1 28 board, and shall advise the board on all legal matters
1 29 relating to the administration of this chapter, ~~and~~ chapter
1 30 56, ~~and~~ chapter 721. The state may be represented by the
1 31 board's legal counsel in any civil action regarding the
1 32 enforcement of this chapter, ~~or~~ chapter 56, ~~or~~ chapter 721,
~~1 33 or~~ at the board's request, the state may be represented by the
1 34 office of the attorney general. Notwithstanding section
1 35 19A.3, all of the board's employees, except for the executive
2 1 director and legal counsel, shall be employed subject to the
2 2 merit system provisions of chapter 19A. The salary of the
2 3 executive director shall be fixed by the board, within the
2 4 range established by the general assembly. The salary of the
2 5 legal counsel shall be fixed by the board, within a salary
2 6 range established by the department of personnel for a
2 7 position requiring similar qualifications and experience.
2 8 Sec. 3. Section 68B.32A, subsections 1, 5, 8, and 11, Code
2 9 2003, are amended to read as follows:
2 10 1. Adopt rules pursuant to chapter 17A and conduct
2 11 hearings under sections 68B.32B and 68B.32C and chapter 17A,
2 12 as necessary to carry out the purposes of this chapter, ~~and~~
2 13 chapter 56, and chapter 721.
2 14 5. Prepare and publish a manual setting forth examples of
2 15 approved uniform systems of accounts and approved methods of
2 16 disclosure for use by persons required to file statements and
2 17 reports under this chapter, ~~and~~ chapter 56, and chapter 721.
2 18 The board shall also prepare and publish other educational
2 19 materials, and any other reports or materials deemed
2 20 appropriate by the board. The board shall annually provide

2 21 all officials and state employees with notification of the
2 22 contents of this chapter and chapter 56 by distributing copies
2 23 of educational materials to associations that represent the
2 24 interests of the various governmental entities for
2 25 dissemination to their membership.

2 26 8. Establish and impose penalties, and recommendations for
2 27 punishment of persons who are subject to penalties of or
2 28 punishment by the board or by other bodies, for the failure to
2 29 comply with the requirements of this chapter, ~~or chapter 56,~~
2 30 ~~or chapter 721.~~

2 31 11. Establish a procedure for requesting and issuing
2 32 ~~formal and informal~~ board advisory opinions to local officials
2 33 and employees and to persons subject to the authority of the
2 34 board under this chapter, ~~or chapter 56, or chapter 721.~~

2 35 Advice contained in ~~formal~~ board advisory opinions shall, if
3 1 followed, constitute a defense to a complaint ~~filed with the~~
3 2 ~~board~~ alleging a violation of this chapter, chapter 56,
3 3 ~~chapter 721,~~ or rules of the board that is based on the same
3 4 facts and circumstances.

3 5 Sec. 4. Section 68B.32B, subsections 1, 4, 8, 9, and 10,
3 6 Code 2003, are amended to read as follows:

3 7 1. a. Any person may file a complaint alleging that a
3 8 candidate, committee, person holding a state office in the
3 9 executive branch of state government, employee of the
3 10 executive branch of state government, or other person has
3 11 committed a violation of chapter 56 or rules adopted by the
3 12 board.

3 13 b. Any person may file a complaint alleging that a person
3 14 holding a state office in the executive branch of state
3 15 government, an employee of the executive branch of state
3 16 government, or a lobbyist or a client of a lobbyist of the
3 17 executive branch of state government has committed a violation
3 18 of this chapter or rules adopted by the board.

3 19 c. ~~Any person may file a complaint alleging that a public~~
3 20 ~~officer or employee or other person has committed a violation~~
3 21 ~~of chapter 721 or rules adopted by the board.~~

3 22 d. The board shall prescribe and provide forms for ~~this~~
3 23 ~~purpose~~ the purposes of this section.

3 24 e. A complaint under this section must include the name
3 25 and address of the complainant, a statement of the facts
3 26 believed to be true that form the basis of the complaint,
3 27 including the sources of information and approximate dates of
3 28 the acts alleged, and a certification by the complainant under
3 29 penalty of perjury that the facts stated to be true are true
3 30 to the best of the complainant's knowledge.

3 31 4. Upon completion of legal review, the chairperson of the
3 32 board shall be advised whether, in the opinion of the legal
3 33 advisor, the complaint states an allegation ~~which~~ that is
3 34 legally sufficient. A legally sufficient allegation must
3 35 allege all of the following:

4 1 a. Facts that would establish a violation of a provision
4 2 of this chapter, chapter 56, ~~chapter 721,~~ or rules adopted by
4 3 the board.

4 4 b. Facts that would establish that the conduct providing
4 5 the basis for the complaint occurred within three years of the
4 6 complaint.

4 7 c. Facts that would establish that the subject of the
4 8 complaint is a party subject to the jurisdiction of the board.

4 9 8. The purpose of an investigation by the board's staff is
4 10 to determine whether there is probable cause to believe that
4 11 there has been a violation of this chapter, ~~chapter 56,~~
4 12 ~~chapter 721,~~ or of rules adopted by the board. To facilitate

4 13 the conduct of investigations, the board may issue and seek
4 14 enforcement of subpoenas requiring the attendance and
4 15 testimony of witnesses and subpoenas requiring the production
4 16 of books, papers, records, and other real evidence relating to
4 17 the matter under investigation. Upon the request of the
4 18 board, an appropriate county attorney or the attorney general
4 19 shall assist the staff of the board in its investigation.

4 20 9. If the board determines on the basis of an
4 21 investigation by board staff that there is probable cause to
4 22 believe the existence of facts that would establish a
4 23 violation of this chapter, ~~chapter 56, chapter 721,~~ or of
4 24 rules adopted by the board, the board may issue a statement of
4 25 charges and notice of a contested case proceeding to the
4 26 complainant and to the person who is the subject of the
4 27 complaint, in the manner provided for the issuance of
4 28 statements of charges under chapter 17A. If the board
4 29 determines on the basis of an investigation by staff that
4 30 there is no probable cause to believe that a violation has
4 31 occurred, the board shall close the investigation, dismiss any

4 32 related complaint, and the subject of the complaint shall be
4 33 notified of the dismissal. If the investigation originated
4 34 from a complaint filed by a person other than the board, the
4 35 person making the complaint shall also be notified of the
5 1 dismissal.

5 2 10. At any stage during the investigation or after the
5 3 initiation of a contested case proceeding, the board may
5 4 approve a settlement regarding an alleged violation. Terms of
5 5 a settlement shall be reduced to writing and be available for
5 6 public inspection. An informal settlement may provide for any
5 7 remedy specified in section 68B.32D. However, the board shall
5 8 not approve a settlement unless the board determines that the
5 9 terms of the settlement are in the public interest and are
5 10 consistent with the purposes of this chapter ~~and, chapter 56,~~
5 11 ~~chapter 721, and of~~ rules of the board. In addition, the
5 12 board may authorize board staff to seek informal voluntary
5 13 compliance in routine matters brought to the attention of the
5 14 board or its staff.

5 15 Sec. 5. Section 68B.32C, subsections 1 and 3, Code 2003,
5 16 are amended to read as follows:

5 17 1. Contested case proceedings initiated as a result of the
5 18 issuance of a statement of charges pursuant to section
5 19 68B.32B, subsection 9, shall be conducted in accordance with
5 20 the requirements of chapter 17A. Clear and convincing
5 21 evidence shall be required to support a finding that a person
5 22 has violated this chapter, ~~chapter 721,~~ or any rules adopted
5 23 by the board pursuant to this chapter ~~or chapter 721.~~ A
5 24 preponderance of the evidence shall be required to support a
5 25 finding that a person has violated chapter 56 or any rules
5 26 adopted by the board pursuant to chapter 56. The case in
5 27 support of the statement of charges shall be presented at the
5 28 hearing by one of the board's attorneys or staff unless, upon
5 29 the request of the board, the charges are prosecuted by
5 30 another legal counsel designated by the attorney general. A
5 31 person making a complaint under section 68B.32B, subsection 1,
5 32 is not a party to contested case proceedings conducted
5 33 relating to allegations contained in the complaint.

5 34 3. Upon a finding by the board that the party charged has
5 35 violated this chapter, ~~chapter 56, chapter 721,~~ or rules
6 1 adopted by the board, the board may impose any penalty
6 2 provided for by section 68B.32D. Upon a final decision of the
6 3 board finding that the party charged has not violated this
6 4 chapter, ~~chapter 56, chapter 721,~~ or the rules of the board,
6 5 the complaint shall be dismissed and the party charged and the
6 6 original complainant, if any, shall be notified.

6 7 Sec. 6. Section 68B.32D, subsection 1, Code 2001, is
6 8 amended to read as follows:

6 9 1. The board, after a hearing and upon a finding that a
6 10 violation of this chapter, chapter 56, ~~chapter 721,~~ or rules
6 11 adopted by the board has occurred, may do one or more of the
6 12 following:

6 13 a. Issue an order requiring the violator to cease and
6 14 desist from the violation found.

6 15 b. Issue an order requiring the violator to take any
6 16 remedial action deemed appropriate by the board.

6 17 c. Issue an order requiring the violator to file any
6 18 report, statement, or other information as required by this
6 19 chapter, chapter 56, ~~chapter 721,~~ or rules adopted by the
6 20 board.

6 21 d. Publicly reprimand the violator for violations of this
6 22 chapter, chapter 56, ~~chapter 721,~~ or rules adopted by the
6 23 board in writing and provide a copy of the reprimand to the
6 24 violator's appointing authority.

6 25 e. Make a written recommendation to the violator's
6 26 appointing authority that the violator be removed or suspended
6 27 from office, and include in the recommendation the length of
6 28 the suspension.

6 29 f. If the violation is a violation of this chapter,
6 30 ~~chapter 721,~~ or rules adopted by the board pursuant to this
6 31 chapter and the violator is an elected official of the
6 32 executive branch of state government, other than an official
6 33 who can only be removed by impeachment, make a written
6 34 recommendation to the attorney general or the appropriate
6 35 county attorney that an action for removal from office be
7 1 initiated pursuant to chapter 66.

7 2 g. If the violation is a violation of this chapter or
7 3 rules adopted by the board pursuant to this chapter and the
7 4 violator is a lobbyist of the executive branch of state
7 5 government, censure, reprimand, or impose other sanctions
7 6 deemed appropriate by the board. A lobbyist may also be
7 7 suspended from lobbying activities if the board finds that

7 8 suspension is an appropriate sanction for the violation
7 9 committed.

7 10 h. Issue an order requiring the violator to pay a civil
7 11 penalty of not more than two thousand dollars for each
7 12 violation of this chapter, chapter 56, chapter 721, or rules
7 13 adopted by the board.

7 14 i. Refer the complaint and supporting information to the
7 15 attorney general or appropriate county attorney with a
7 16 recommendation for prosecution or enforcement of criminal
7 17 penalties.

7 18 Sec. 7. Section 68B.37, subsection 1, Code 2003, is
7 19 amended by adding the following new paragraph:

7 20 NEW PARAGRAPH. e. The receipt of salaries, fees, or other
7 21 compensation paid to the lobbyist for acting directly to
7 22 encourage the passage, defeat, approval, veto, or modification
7 23 of legislation, administrative rule, or an executive order by
7 24 the members of the general assembly, a state agency, or any
7 25 statewide elected official. The receipt of salaries, fees, or
7 26 compensation shall be disclosed for each client the lobbyist
7 27 represents. In situations where a lobbyist receives a salary,
7 28 the lobbyist shall disclose the amount of the lobbyist's
7 29 salary that is attributable to time actually spent on lobbying
7 30 activities.

7 31 Sec. 8. NEW SECTION. 721.13 COMPLAINTS FILED WITH IOWA
7 32 ETHICS AND CAMPAIGN DISCLOSURE BOARD.

7 33 Complaints concerning possible violations of this chapter
7 34 involving executive branch officers, executive branch
7 35 employees, or candidates for executive branch elected office
8 1 shall be filed with the Iowa ethics and campaign disclosure
8 2 board pursuant to section 68B.32B.

8 3 Sec. 9. Section 68B.38, Code 2003, is repealed.

8 4 Sec. 10. CODE EDITOR DIRECTIVE. The Code editor shall
8 5 move and renumber chapter 56 as chapter 68A, and shall change
8 6 all references to chapter 56 appropriately throughout the
8 7 Code.

8 8 EXPLANATION

8 9 This bill provides that complaints regarding possible
8 10 violations of Code chapter 721, relating to official
8 11 misconduct, are to be filed with the Iowa ethics and campaign
8 12 disclosure board. Code chapter 721 contains such prohibitions
8 13 for state employees such as using public motor vehicles for
8 14 political purposes, engaging in campaign work during state
8 15 employment, and furnishing anything of value to the state
8 16 under a contract other than one awarded through open and
8 17 competitive bidding. Other amendments are also made to
8 18 various provisions in Code chapter 68B to add appropriate
8 19 references to Code chapter 721.

8 20 The bill adds a new paragraph to Code section 68B.37
8 21 requiring a lobbyist to disclose in written reports all income
8 22 for activity-related time spent on lobbying activities, and
8 23 repeals Code section 68B.38, requiring client reports.

8 24 The bill also amends Code section 68B.32A relating to the
8 25 issuance of advisory opinions by the board.

8 26 The bill also directs the Code editor to designate Code
8 27 chapter 56, relating to campaign finance disclosure, as Code
8 28 chapter 68A, and to make appropriate changes throughout the
8 29 Code as necessary to reflect the change.

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